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ATTORNEYS FOR DEBTOR
6301.04 & 6302.01

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORTH WORTH DIVISION

IN RE:	)	IN PROCEEDINGS UNDER
DANNY JOE McCLURE and KIMBERLY DESKINS McCLURE	)	CHAPTER 7
DEBTOR	)	CASE NO. 07-43036-DML-7
DANNY JOE McCLURE and KIMBERLY DESKINS McCLURE, Plaintiff	)	ADVERSARY NO. ______
v.	)	
BANK OF AMERICA, CREDITORS FINANCIAL GROUP, LLC AND PETER REBELO Defendant	)	

COMPLAINT FOR CONTEMPT AND MONEY DAMAGES AGAINST BANK OF AMERICA, CREDITORS FINANCIAL GROUP, LLC AND PETER REBELO

TO THE HONORABLE D. MICHAEL LYNN, UNITED STATES BANKRUPTCY JUDGE:

COME NOW, DANNY JOE McCLURE, and KIMBERLY McCLURE., the Debtors in the above-styled and numbered proceedings, and moves the Court to hold Creditors Financial Group, LLC, Peter Rebelo and the Bank of America in contempt of this Court, and award the Debtors sanctions pursuant to 11 U.S.C. §105, §362 and §524 based on the following:

JURISDICTION

1. This is a Complaint for declaratory judgment over which this Court has jurisdiction pursuant to 28 U.S.C. §157 and §1334 and Bankruptcy Rule 7001. Venue is proper pursuant to 28 U.S.C. §1408 and §1409. This is a core proceeding within the meaning of 28 U.S.C. §157(b)(2).

2. The Defendant, Bank of America, Creditors Financial Group, LLC and Peter Rebelo, can be served pursuant to Bankruptcy Rule 7004(a) by service on the following:

Bank of America
P.O. Box 650260
Dallas, TX 75265-0260

Bank of America Corporation
401 N. Tryon Street
Charlotte, NC 28255-0001
Attn: President or General Counsel

Bank of America
P.O. Box 21848
Greensboro, NC 27420-1848

Bank of America Corporation
c/o CT Corporation System
350 N. St. Paul Street
Dallas, TX 75201

Mr. Sidney H. Scheinberg
Glast, Phillips & Murray, P.C.
2200 One Galleria Tower
13355 Noel Road, L.B. 48
Dallas, TX 75240-1518
(Attorneys for Bank of America)

William Minnes
Bank of America Legal Department
P.O. Box 37000
San Francisco, CA 94137

Creditors Financial Group, LLC
%Corporation Service Company
1560 Broadway, Suite 2090
Denver, CO 80202
(It's Registered Agent)

Creditors Financial Group, LLC
3131 South Vaughn Way, Suite 110
Aurora, CO 80014

Mr. Peter Rebelo
%Creditors Financial Group, LLC
P.O. Box 40190
Aurora, CO 80044-0290

BACKGROUND

4. On the 18th day of July, 2007, the Debtors commenced a proceeding under Chapter 7 in this Court. (Docket No. 1).

5. The Debtors received their discharge on November 15, 2007. (Docket No. 23).

FACTUAL ALLEGATIONS

6. Bank Of America, hereinafter "BOA", had numerous business accounts with the Qualico, Inc., a Debtor in a separate Chapter 7 proceeding, all of which were personally guaranteed by one or both of the Debtors and all of which were listed in the Debtors' and in Qualico's Chapter 7 schedules, including Account #68711010882099. (See Exhibit "1-A" and "1-B").

7. On November 30, 2007, “Craig”[1], an employee of Creditors’s Financial Group, LLC (hereinafter CFG), a collection agency apparently hired to collect the debt to BOA, called and left a message on Mr. McClure’s phone at approximately 8:05 o’clock a.m., which advised Mr. McClure that he (McClure) was to stop ignoring his obligations and that he needed to phone CFG the same day or face legal consequences for his inaction.

8. Mr. McClure called “Craig” back at approximately 8:32 o’clock a.m. on November 30, 2007 and left a message that he (McClure) had no idea what the call concerned and that he needed some detailed information to satisfy “”Craig”’s” request. Mr. McClure specifically asked what account or company “Craig” was representing so that he could provide the necessary information when “Craig” called back.

9. “Craig” called back and left a message that said he had seen Mr. McClure’s number on his caller ID and was merely trying to reach him.

10. “Craig” became hostile and, again, left a message stating that Mr. McClure needed to meet his obligations and stop trying to beat CFG out of money that was loaned to Mr. McClure. “Craig” went on to tell Mr. McClure to “be a man and talk to me on the phone” or “we are going to show up on your doorstep and demand payment, along with seeing you in court very soon – call me back”.

11. Mr. McClure called “Craig” back at approximately 9:03 o’clock a.m. and had to leave a message again. This time, Mr. McClure advised that he would call again but would appreciate

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[1]“ Craig” never gave the Plaintiff his last name but, based upon the information in the attached Exhibits, “ Craig” appears to be one “ Craig” Osborne.

knowing the best time of day to reach "Craig" so that they did not continue to miss each other's calls.

12. "Craig" phoned again at approximately 9:08 o'clock a.m. and left another message that said he had received another message from Mr. McClure but not to expect "Craig" to sit around and wait for Mr. McClure's calls and that Mr. McClure was to keep calling until "Craig" was off of his other line and could answer the phone.

13. "Craig" also said, "I am very busy here, so let's not keep playing games of phone tag, and you keep phoning me until I answer the phone where we can talk." "Craig" also said that, perhaps Mr. McClure didn't understand the seriousness of the situation which would "rain a lot of grief down" on Mr. McClure if he didn't call "Craig" and get the matter resolved.

14. Mr. McClure was finally able to get through to "Craig" at approximately 1:11 o'clock p.m. on November 30th. "Craig" began by saying "It's about time", and proceeded to tell Mr. McClure that they needed to get down to business to discuss his "walking away" from his obligations and that he had a huge loan with Bank of America and that they were coming after Mr. McClure to collect.

15. He also said that they might already have dispatched someone to Mr. McClure's residence to confront him with having ignored his earlier calls or leaving messages to further delay the inevitable. Mr. McClure stopped "Craig" at this point and advised that he had filed a personal and corporate bankruptcy. "Craig" simply replied "damn it" and hung up.

16. On Thursday, December 6, 2007, six (6) days after "Craig" had been advised of the bankruptcy filings, Mr. McClure received a letter (written on December 3, 2007) and a call from Mr. Peter Rebelo at 12:55 o'clock p.m., who left a message saying that it was "likely too late now" as someone was coming to Mr. McClure's house that day to talk to him about a debt he had been

ignoring and that Mr. Rebelo was also having papers filed in Court by the end of the day (December 6, 2007) to get the legal process started to sue Mr. McClure.

17. Mr. Rebelo also advised Mr. McClure that he needed to understand the importance of returning his phone call immediately at 303-369-2345, extension 2254. Mr. McClure called back and left a message that gave Mr. Rebelo the bankruptcy filing information and the case numbers for both the personal and the corporate bankruptcies.

18. Notwithstanding the collective Defendants' actual knowledge of the pendency of the Debtor's Chapter 7 case, including the December 6, 2007 phone call to Mr. Rebelo, CFG, on behalf of Bank of America, has continued to attempt collection of the claim as evidenced by the CFG telephone number appearing on the Debtor's caller ID almost every day, and for a couple of times each day.

19. CFG has left no more messages since the December 6, 2007 call to Mr. Rebelo but, CFG continues to call, nonetheless. Since December 6, 2007, the following calls have been made by CFG to Debtors, with no message left: December 7, 2007, 9:05 o'clock a.m., December 7, 2007, 12:34 o'clock p.m., December 10, 2007, 8:34 o'clock a.m., December 10, 2007, 10:17 o'clock a.m., December 11, 2007, 9:11 o'clock a.m.

20. Respondent's techniques and patterns of conduct are not unique. Similar actions are reported at www.whocalled.us/lookup/8772982251. Excerpts from which are attached hereto as Exhibit "2".

RELIEF REQUESTED

21. The actions of CFG, Peter Rebelo and BOA were knowingly, willfully and intentionally done and in direct violation of the provisions of 11 U.S.C. §524 and §362 (h)

resulting in actual damages to the Debtors, including emotional distress, embarrassment, attorney's fees and costs.

22. The egregious nature and conscious indifference of the actions of CFG, Peter Rebelo and BOA demonstrate a calculated and conscious disregard of the bankruptcy laws, and an intent to cause distress and fear to the Plaintiffs which entitle the Debtor to recover punitive damages for the emotional and other damage intentionally inflicted on the Debtors.

23. A threatening phone call from an aggressive and abusive bill collector with knowledge, actual or imputed, of the bankruptcy case and discharge, is cause to award the Plaintiffs both actual and exemplary damages. The repeated contacts and threats of sending someone to the Plaintiffs' home warrant an award of actual and significant exemplary and punitive damages.

WHEREFORE, PREMISES CONSIDERED, pursuant to the provisions of 11 U.S.C. §105, §362 and §524 , Debtors/Plaintiffs pray that the Court hold Creditors Financial Group, LLC, Peter Rebelo and Bank of America jointly and severally in contempt of this Court and award Debtors their actual damages including, but not limited to, reasonable attorney's fees for the filing of this Motion, and to punitive/exemplary damages which Movant alleges should be awarded in an amount of not less than $100,000.00, jointly and severally.

Debtors pray for general relief.

Respectfully submitted:

LAW OFFICES OF
ST. CLAIR NEWBERN, III
A Professional Corporation

By:__/s/ St. Clair Newbern, III_______
ST. CLAIR NEWBERN, III
State Bar No. 14941000
1701 River Run, Suite 1000
Fort Worth, Texas 76107
Telephone: (817) 870-2647
Facsimile: (817) 335-8658

ATTORNEYS FOR DEBTOR

CERTIFICATE OF SERVICE

______I hereby certify that I have this date served a true and correct copy of the foregoing via first class mail, proper postage affixed or via ECF, upon the following:

Shawn K. Brown
Chapter 7 Trustee
P.O. Box 93749
Southlake, TX 76092

Mr. Sidney H. Scheinberg
Glast, Phillips & Murray, P.C.
2200 One Galleria Tower
13355 Noel Road, L.B. 48
Dallas, TX 75240-1518
(Attorneys for Bank of America)

Creditors Financial Group, LLC
P.O. Box 40190
Aurora, CO 80044-0290

Mr. Peter Rebelo
%Creditors Financial Group, LLC
P.O. Box 40190
Aurora, CO 80044-0290

Creditors Financial Group, LLC
3131 South Vaughn Way, Suite 110
Aurora, CO 80014

Creditors Financial Group, LLC
%Corporation Service Company
1560 Broadway, Suite 2090
Denver, CO 80202
(It's Registered Agent)

Bank of America
P.O. Box 650260
Dallas, TX 75265-0260

Bank of America Corporation
401 N. Tryon Street
Charlotte, NC 28255-0001
Attn: President or General Counsel

Bank of America
P.O. Box 21848
Greensboro, NC 27420-1848

Bank of America Corporation
c/o CT Corporation System
350 N. St. Paul Street
Dallas, TX 75201

and upon all those filing a Notice of Appearance:

Recovery Management Systems Corp.
Attn: Ramesh Singh
25 SE 2nd Ave., Ste. 1120
Miami, FL 33131-8113

Dated: January 2, 2007.

_/s/ St. Clair Newbern, III____________
ST. CLAIR NEWBERN, III